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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 18, 1993

**BY HAND**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Consumer Protection and Customer Service  
MM Docket No. 92-263

Dear Ms. Searcy:

Please find attached on behalf of the National Association of Telecommunications Officers and Advisors, et al., an original and nine copies of the Opposition of the Local Governments to the Petitions for Reconsideration Filed by the National Cable Television Association and the Coalition of Small System Operators in the above-captioned proceeding.

Any questions regarding the submission should be referred to the undersigned.

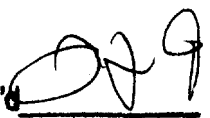
Sincerely,



Bruce A. Henoch

Attachment

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 18 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 8 of )  
the Cable Television Consumer )  
Protection and Competition )  
Act of 1992 )

MM Docket No. 92-263

Consumer Protection and Customer )  
Service )

TO: The Commission

**OPPOSITION OF THE LOCAL GOVERNMENTS TO THE  
PETITIONS FOR RECONSIDERATION FILED BY THE  
NATIONAL CABLE TELEVISION ASSOCIATION AND THE  
COALITION OF SMALL SYSTEM OPERATORS**

The National Association of Telecommunications  
Officers and Advisors, the United States Conference of  
Mayors, and the National Association of Counties  
(collectively, the "Local Governments")<sup>1</sup> submit this  
Opposition to the Petitions for Reconsideration filed by  
the National Cable Television Association ("NCTA") and

<sup>1</sup> The National Association of Telecommunications

the Coalition of Small System Operators ("CSSO") in the above-captioned proceeding.

I. INTRODUCTION

The Local Governments submit this Opposition in response to Petitions for Reconsideration filed by NCTA and CSSO, and urge the Commission to deny these Petitions. The Commission has carefully crafted customer service rules that meet Congress' goal of providing subscribers with an adequate level of customer

## II. DISCUSSION

### A. No Automatic Exemption for Small Systems is Warranted.

CSSO in its Petition urges the Commission to reconsider the customer service rules and find that a franchising authority can only enforce the federal standards with regard to small operators at renewal time or upon a showing to the Commission that particular standards are needed based on complaints or other evidence.

The Commission in its Report and Order<sup>2</sup> recognized that adopting one set of standards to apply to cable operators nationwide requires a balancing of the interests of consumers, cable operators, and Congressional goals and objectives. Thus, while the Commission realized that there was an urgent need for uniform minimum customer service standards, it carefully crafted a set of standards that would impose a minimal burden on all operators. The Commission considered a wide range of possible standards<sup>3</sup>--including many that were much more stringent--before selecting the standards it ultimately adopted. The Commission determined that,

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<sup>2</sup> Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service, FCC 93-145 (Released April 7, 1993) ("R&O").

<sup>3</sup> See R&O at ¶ 33.

by adopting less stringent customer standards that address certain key issues, it could strike a balance between the need for uniform standards and the goal of creating rules that would be fair to all operators. The rules adopted in the R&O accomplish this balance, ensuring all subscribers adequate service. There is no reason why subscribers to small cable systems should be deprived of the benefit of this compromise or treated differently than subscribers generally. The statute reflects Congress' determination that all subscribers are entitled to a minimum level of customer service, including subscribers to small cable systems.

The legislative history contains no evidence that subscribers to small systems experience any fewer or different problems than other subscribers, and Congress did not provide any exemptions for small systems when it drafted the amendments to section 632 in the 1992 Act. Whereas the rate regulation provisions of section 623 specifically direct the Commission to design regulations that reduce the burden and costs on small systems<sup>4</sup>, no such exception exists with regard to customer service. Had Congress meant to provide for such an exemption, it surely would have done so expressly, as it did with regard to rate regulation. Nonetheless, the Commission

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<sup>4</sup> See section 623(i).

did recognize that under certain limited circumstances, a small system might qualify for an exemption from one or more of the standards, and thus provided a mechanism by which a small system can seek a waiver if it believes that a particular standard is too onerous. R&O at ¶ 11. The Commission recognized that there should be a presumption that all cable subscribers are entitled to a minimum level of customer service, and thus placed the burden on the operator to show why a particular standard is too onerous, and to propose an alternative standard.

CSSO in its Petition urges the Commission to turn this procedure on its head and place the burden on franchising authorities to show why the standards are necessary. Such a reversal is not only unfair to customers of small operators, but it is also unconscionable to switch this burden to small municipal franchising authorities which are much less able to muster the resources necessary to make such a showing. It is worth noting that the 11 corporations that make up the CSSO serve over 880,000 subscribers, and have revenues in the hundreds of millions of dollars.<sup>5</sup> This group proposes to shift the burden to small franchising

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<sup>5</sup> See CSSO Petition at 1. Assuming that each subscriber produces, on average, revenue of \$35 per month, the total yearly gross revenues of the operators that make up CSSO are approximately \$369 million.

authorities to demonstrate that each and every standard promulgated by the Commission is necessary, despite the fact that small local governments generally have limited resources and personnel. There is no reason that such franchising authorities should have this type of strain imposed on their resources in order to ensure that local cable subscribers are able to enjoy the same level of customer service as subscribers in more populated areas.

B. A Franchising Authority May Unilaterally  
Impose More Stringent Standards.

The NCTA in its Petition for Reconsideration states that the language of section 632 allows franchising authorities to impose customer service standards that exceed the federal standards only if the cable operator agrees to the standards. This reading of section 632 is at variance with the plain language of the statute and the legislative history. The Commission in the R&O has concluded that section 632 preserves the ability of franchising authorities to adopt standards that exceed the FCC standards either through the regulatory or franchising process. R&O at ¶ 10. Section 632(c)(2) clearly states that, "[n]othing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes

customer service requirements that exceed the standards set by the Commission . . . or that addresses matters not addressed by the standards set by the Commission . . . ." (emphasis added). The plain language of this provision allows franchising authorities to unilaterally adopt and enforce stricter provisions; there is absolutely no requirement that the operator approve the stricter standards.

This conclusion is supported by the legislative history of section 632. As the House Report states,

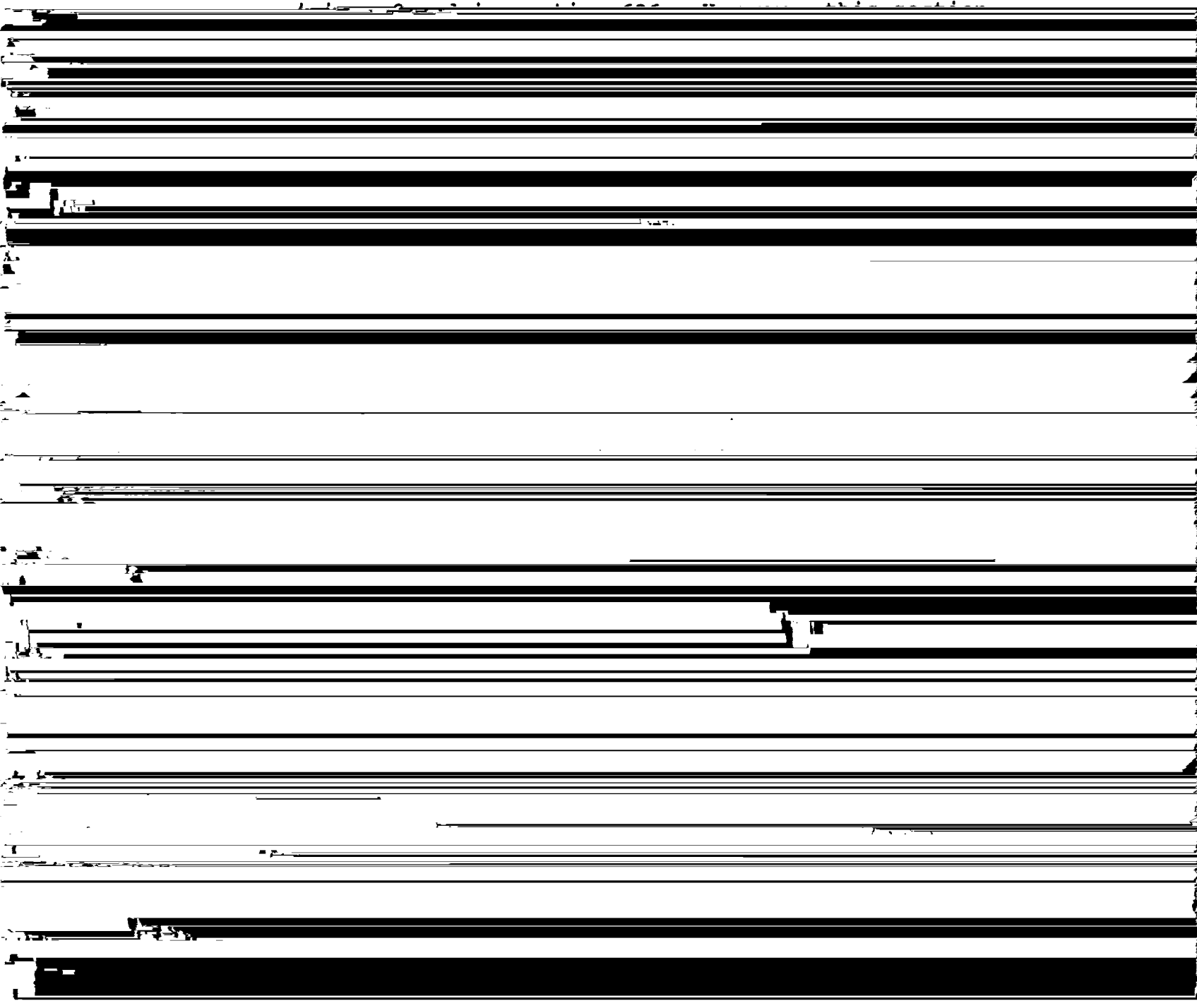
The legislation allows local authorities to require stricter standards as part of a franchise agreement and to establish and enforce laws that impose more stringent customer service requirements. In addition, states and franchising authorities retain the ability . . . to enact and enforce legislation imposing more stringent consumer protection standards, whether or not the provisions of such laws are written into the cable franchise agreement.

H.R. Rep. No. 102-628, 102 Cong., 2d Sess. 37 (1992) ("House Report").

As the Commission correctly noted in the R&O, franchising authorities will not be able to enact stricter standards without following the procedural requirements attendant to the political process. This is sufficient to ensure that the cable operator will have ample opportunity to make its views known. R&O ¶ 12.



NCTA also claims in its Petition that franchising authorities should not be able to impose any standards (including the FCC standards) during the term of an existing franchise. The only support offered by NCTA for this position is an incorrect reading of the renewal

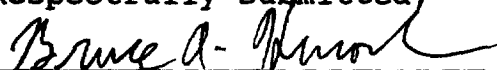


during the franchise term. House Report at 37.

III. CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions for Reconsideration filed by NCTA and CSSO in this proceeding.

Respectfully submitted,



Norman M. Sinel  
Stephanie M. Phillipps  
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Date: June 18, 1993